

---

**In The  
Supreme Court of the United States**  
October Term, 1989

---

HELEN ROBINSON,  
*Petitioner,*

VS.

THE TOWNSHIP OF WATERFORD, OFFICER DONALD BAILEY,  
OFFICER TIMOTHY TARPENING, PETER DONLIN, AND  
WALTER BEDELL

*Respondents.*

---

**BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF  
CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT**

---

MARTIN, BACON & MARTIN, P.C.  
BY: JOHN G. BACON P10331  
*Attorney of Record for Respondents,  
Officer Donald Bailey and  
Officer Timothy Tarpenting*  
44 First Street  
Mt. Clemens, MI 48043  
(313) 979-6500

MARTIN, BACON & MARTIN, P.C.  
BY: JONATHAN E. MARTIN P17151  
KEVIN L. MOFFATT P34284  
*Attorneys for Respondents,  
Officer Donald Bailey and  
Officer Timothy Tarpenting*  
44 First Street  
Mt. Clemens, MI 48043  
(313) 979-6500



## TABLE OF AUTHORITIES

	PAGE
<b>CASES:</b>	
Fort Wayne Mortgage Company v. Carletos, 95 Mich App 752, 757; 291 N.W. 2d 193, 195 (1980) .....	18
United States of America v Jenkins, 871 F.2d 598 (6th Cir 1989) .....	3, 4

## TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES .....	i
STATEMENT OF THE CASE .....	1
THE REASONS WHY CERTIORARI SHOULD NOT BE GRANTED:	
II.	
CERTIORARI SHOULD NOT BE GRANTED BECAUSE THE COURT OF APPEALS DID NOT RENDER A DECISION THAT IS IN CONFLICT WITH ANY DECISION OF ANOTHER FED- ERAL COURT OF APPEALS ON THE SAME MATTER .....	3
III.	
THE COURT BELOW PROPERLY APPLIED MICHIGAN LAW IN REFUSING TO SET ASIDE THE DISTRICT COURT'S AWARD OF A DIRECTED VERDICT IN FAVOR OF THE RESPONDENTS BAILEY AND TARPENING ON THE PENDANT STATE LAW CLAIM OF MALICIOUS PROSECU- TION .....	19
CONCLUSION .....	20

No. \_\_\_\_\_  
**In The**  
**Supreme Court of the United States**  
**October Term, 1989**

---

HELEN ROBINSON,  
*Petitioner,*

vs.

THE TOWNSHIP OF WATERFORD, OFFICER DONALD BAILEY,  
OFFICER TIMOTHY TARPENING, PETER DONLIN, AND  
WALTER BEDELL  
*Respondents.*

---

**BRIEF IN OPPOSITION TO PETITION FOR A WRIT  
OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE SIXTH CIRCUIT**

---

**STATEMENT OF THE CASE**

On May 24, 1980, Petitioner's Decedent, William Robinson, had again wandered into the cafeteria of the Sears department store located inside of the Pontiac Mall. It was not the first occasion that William Robinson wandered into the Sears store. In fact, Gregory Palmer, the security guard at the Sears store, had received numerous calls from employees and sales clerks regarding Mr. Robinson's behavior on prior occasions. In March of 1980, William Robinson was present in the cafeteria of Sears and had failed to pay for some coffee and a sandwich. William Robinson was asked to pay for the items, but did not have any money. When Mr. Robinson asked some customers for money to pay for his items, they shrugged their shoulders and walked away. The Waterford Township Police were called, and they responded. Mr. Robinson was not arrested by the police, but was again transported to the Pontiac Mission, where he customarily asked to be taken.

On May 23, 1980, Mr. Robinson was again present at the Sears store. He had a very offensive odor. After leaving the Sears store, Mr. Robinson attempted to gain entry to a car which one of the Sears customers was entering. Mr. Palmer again called the Waterford Township Police Department because Mr. Robinson's conduct presented an annoyance to the customers in the store.

On the following day, May 24, 1980, Mr. Robinson was again present inside of the Sears store. Mr. Palmer received a call from the switchboard operator on the second floor, a restricted area, indicating that Mr. Robinson was wandering around. Mr. Robinson was asked to exit the restricted area and leave the store. However, Mr. Palmer was again called to the cafeteria where Mr. Robinson had proceeded. Mr. Palmer was informed that Mr. Robinson was taking the bread from the tops of the sandwiches in the food line and putting them in his pockets. Mr. Robinson had also helped himself to a cup of coffee, and walked through the line without paying for the item. Mr. Robinson also approached customers asking for money again. After Mr. Robinson sat down with his coffee, he had taken approximately 6 to 12 packages of sugar and poured them all in his coffee and made a mess on the table in the area. Mr. Robinson was asked by Mr. Palmer if he had any money, which he did not. Mr. Robinson was asked to leave the store by Mr. Palmer, but he did not.

Gregory Palmer then called the Waterford Township Police Department because Mr. Robinson had failed to pay for food, and had failed to leave the store when he was asked to do so. Mr. Palmer was also concerned that the odor around Mr. Robinson was offensive, and that the customers in the store were staying away from Mr. Robinson by going to tables on the other side of the cafeteria, or leaving the cafeteria completely.

Officer Timothy Tarpening responded to the call that was made by Gregory Palmer. Officer Tarpening not only discussed this conduct with Mr. Palmer, he also witnessed William Robinson's behavior and physical condition while inside of the store. Respondent Officer Timothy Tarpening arrested

William Robinson only after he had made his own observations, which indeed confirmed the information that was given to him by Gregory Palmer. Officer Tarpening observed that Mr. Robinson was emitting a body odor that was very offensive to the general public by observing how the people in the area reacted to William Robinson. Mr. Robinson was also mumbling to himself, and acting in a manner that was very annoying and alarming to the people in the Sears store.

William Robinson was arrested under Section 5.3 of Waterford Township Ordinance 8.7, entitled, "Disorderly Conduct Ordinance." The acts of conduct displayed by William Robinson, giving rise to probable cause for the arrest were in fact committed in the presence of Respondent Officer Tarpening. In that this was a misdemeanor offense, a warrantless arrest was permitted because conduct took place in the presence of Respondent Tarpening, the arresting police officer.

## THE REASONS WHY CERTIORARI SHOULD NOT BE GRANTED

### II.

#### CERTIORARI SHOULD NOT BE GRANTED BECAUSE THE COURT OF APPEALS DID NOT RENDER A DECISION THAT IS IN CONFLICT WITH ANY DECISION OF ANOTHER FEDERAL COURT OF APPEALS ON THE SAME MATTER.

In order to convince this Court to grant her Petition for Certiorari, the Petitioner has alleged that the circuits are not in harmony on the appropriate standard of review to apply in reviewing jury verdicts. The Petitioner indicates in her petition that the standard of review cited in the *United States of America v Jenkins*, 871 F.2d 598 (6th Cir. 1989) is different than the standards of review in other courts. What the Petitioner has fundamentally failed to assert in bringing her Petition for Certiorari, is that the courts below did not render any decision that is in conflict with the decision of another

court of appeals on the same matter. The standard of review followed by the court below was properly cited in the *Jenkins, supra*, decision. In fact, these Respondents are also of the opinion that the jury verdict in favor of Respondents Tarpenting and Bailey would not be disturbed when applying any of the other standards of review as cited in the Petitioner's Petition for Certiorari. As the court below properly indicated in its opinion, the jury verdict must be upheld unless it is against the weight of the evidence. (See page A-14 of Petitioner's Petition for Certiorari.)

A further review by this Court will also confirm that the court below properly held that the jury finding was not against the weight of the evidence and that there was substantial evidence to support the verdict. The arresting police officer, Respondent Tarpenting, testified at TR Vol. I of II, beginning at page 127, as follows (See Joint Appendix, page 175 et seq.):

Q "All right. Now, going back to May 24, 1980, I believe that you said that you were dispatched to the Sears store, is that correct?

A That is correct.

Q What type of dispatch did you receive?

A Well, the exact wording I wouldn't be sure of. Probably some type of trouble with the man at the Sears store. But, as I said earlier, I am really not sure I was out in my car. I may have been sent from the station.

. . .

Q Now, with regard to going to the store, in your report, you wrote, I believe that you were going to arrest Mr. Robinson?

A Yes.

Q With regard to that phrase, "...going to arrest," can you tell us what you mean by that?



A Okay. Well, I write the report after we are through with the incident. And what I mean by "... going to arrest" is I am going down to Sears to really see what we have. I got down there, and I observed the grounds to make an arrest, and I made an arrest.

Q All right. Now, you say you observed the grounds to make an arrest. Do you use information that other people may supply you with as a portion, a small percentage of the reason to arrest?

A Yes I do.

• • •

Q Perhaps better stated, would you use your own confirmation of information that a citizen has given you as a basis for arrest?

A As part of the criteria, yes.

Q And is that what you did with regard to Mr. Robinson?

A Yes, it is.

Q Did you in fact, with regard to the arrest of Mr. Robinson, receive some information with regard to his behavior?

A Yes, I did.

Q And was that information received from someone you believed to be a good source of information?

A Yes it was.

Q Who was that individual?

A Greg Palmer of Sears security.

Q Of Sears security, do you mean a security guard that worked at the Sears store?

A He works security against shoplifting. He works plain clothes, and he observes everybody in the store, and he watches for somebody trying to take items.

Q Now I want to know, and I want the jury to know what behavior you observed in Mr. Robinson that gave you confirmation or gave you observation to make the arrest.

A The behavior I observed?

Q Yes.

A Okay. When I went into Sears, I met Mr. Palmer, and he pointed out Mr. Robinson who was in the cafeteria drinking coffee. He was sitting there mumbling to himself. No one actually right near his immediate area round him. He got up, shuffled out of the cafeteria, walked — a very slow pace, the man always walked with a very slow pace. He kept mumbling to himself. He draws a lot of attention to himself. He has emitted quite an odor, which is very offensive to the general public.

Q (by Mr. Martin) With regard to the ordinance that we are dealing with Officer Tarpeneing, are you familiar with that ordinance?

A Yes, I am.

Q Is it required that as part of the — to violate the ordinance, that someone be annoyed by a person, in order for that person to be disorderly?

A Yes, that would be part of it.

Q And is part of the ordinance that a person, a citizen, be alarmed by the disorderly person?

A Yes.

Q And did you observe conduct in Mr. Robinson that in your opinion annoyed or alarmed people in the Sears store?

A Yes, sir.

Q (By Mr. Martin) Again, Officer Tarpeneing, just so it's fresh in the jury's mind, did you observe behavior that

Mr. Robinson was demonstrating that in your opinion was annoying or seriously annoying to people in the Sears store?

A Yes, I did.

Q Thank you. Did you believe that that behavior that you observed was sufficient to form the basis of Mr. Robinson's arrest?

A Yes.

Q Did you, Officer Tarpeneing, arrest Mr. Robinson in good faith?

A Yes.

Q Did you have any reason or any thought in your mind that you were going to get Mr. Robinson for some ulterior reason?

A No.

Q Did you discuss with Corporal Bailey at the time — now Detective Bailey — that the Township Police should get this man off the street for some reason?

A No.

TR Vol. I of II, pp. 127-133; Joint Appendix pp. 174-180.

In addition, Respondent, Officer Bailey, also testified as to standard police procedure behind the arrest of Mr. Robinson. Respondent Bailey gave the following testimony at the trial:

Q (By Mr. Martin) Do you have any recollection of being contacted by the Sears Security Department with regard to Mr. William Robinson?

A No myself personally, no.

Q Could you have been contacted?

A I could have been yes. It has been a long time, sir.

Q All right. Now, if you were contacted what would be the typical or ordinary procedure that would have been followed?

A I would have filled out a dispatch card, would have handed it to my dispatcher, who would in turn have stamped the card with the time and a number on it, and would have dispatched a car.

Q Now, did you at some point in time receive a radio transmission from Officer Tarpeneing?

A Yes, sir.

Q And do you know if he was responding to a dispatch?

A Yes, sir.

Q (By Mr. Martin) Detective Bailey, going back, do you recall you received a radio transmission from Officer Tarpeneing when he arrived at the Sears store?

A I can't say for sure if I heard a radio transmission of that or not.

Q Let's speak about procedure back in May of 1980 then. Would it be procedure for you to receive a transmission from an officer responding to a dispatch in a circumstance like this?

A Oh, yes, sir.

. . .

Q (By Mr. Martin) Detective Bailey, what would that procedure be?

A When I hand the dispatch card to the dispatcher, they punch a time when they dispatch the car, and they punch another time when the car arrives at the scene, then it — they say that they are 1097 and the card is punched again.

Q Who is the "they" who say that?

A The officer, whoever arrives at the scene of anything.

Q What does 1097 mean?

A That means I am at the scene, I will be out of my car?

Q Does that mean he will be leaving the car?

A That is correct.

Q Is it the procedure for any officer at that point to tell you anything about what may or may not be occurring at the scene?

A Not always, no.

Q Because he may not know what's occurring.

A That is correct.

Q Now, did you receive a second radio transmission from Officer Tarpeneing?

A Yes, sir.

Q Now, this second radio transmission from Officer Tarpeneing, what information would be contained or was contained in that transmission?

A The best I can recall, Officer Tarpeneing had requested or told myself that he had Mr. Robinson at the mall for the same type of things that had been occurring all week. And I asked him, I believe, words to the effect, "Do you have charges?"

Q What does that mean?

A That means do you have an arrestable offense, can you arrest the person.

Q All right. Do you recall what his response was?

A Yes. I believe he said yes.

Q Do you recall exactly that conversation?

A Not verbatim, sir.

Q All right. And what would occur after that, or what did occur after that, if you recall.

A That he would — I may have said something, "If you have the charges, arrest him." And then Officer Tarpensing would have taken him to the county jail.

Q Is that what you meant earlier when you said you would issue the order to make the arrest?

. . .

Q (By Mr. Martin) Detective Bailey, is that what you meant when you said that you placed the order for the arrest?

A Yes, sir.

Q And prior to placing that order for the arrest, Officer Tarpensing would have relayed information to you about what he had found at the scene?

A Yes, sir.

Q All right. When you gave the order for the arrest, did you think to your mind that this is the same man that you had been having problems with that week?

A Yes, sir.

Q And when you gave the order to make the arrest, did you tell Officer Tarpensing where to take Mr. Robinson?

A No, sir, I didn't have to.

Q Why not?

A Because all of our department, everybody that we arrest, everybody goes directly to the county jail.

TR Vol. I of II, pp. 51-56; Joint Appendix pp. 273-278.

Mr. Robinson's behavior on the date preceding his arrest and on the date of his arrest, was also observed by Gregory Palmer, the security guard employed at the Sears store where Mr. Robinson was arrested. Mr. Palmer offered the following testimony at the trial:

Q "Was there a second incident involving Mr. Robinson, Mr. Palmer?"

A Yes there was.

Q And what was the date of that?

A This was the 23rd of May I believe.

Q Of what year?

A 1980.

Q And will you tell me about that incident, Mr. Palmer?

A I had received a phone call from a customer.

° ° °

Q (By Mr. Martin) Mr. Palmer, would you continue, please.

A The party that called had made a complaint as far as somebody trying to gain entry in their car to get a ride somewhere.

Q Did you have contact with Mr. Robinson that day?

A We did it earlier in that day.

Q What was the contact earlier in that day?

° ° °

Q (By Mr. Martin) Mr. Palmer for Mr. Jarrett's benefit —

° ° °

Q (By Mr. Martin) Would you please use "I," if it was you.

A Yes.

Q Will you continue telling us what occurred.

A I had contact with Mr. Robinson earlier in the day. I don't recall exactly what it was.

Q How did this incident of gaining entry to the car, what did that have to do with Mr. Robinson?

A Well, it was around the same time that Mr. Robinson was in the store, and he left. And the party that called described Mr. Robinson, his appearance, his clothing, exactly what he was wearing. They described other features of

Mr. Robinson, that his smell was terrible, and there was quite an odor, a smell. And she had tried to get away, and she did leave.

Q Mr. Palmer, did you call the Waterford Township Police that day?

A Yes, I did.

Q And did a police car or officer respond to the call?

A I don't recall if they arrived there or not. I did make the phone call to Waterford.

Q Why did you make the call?

A As an annoyance to the customers in the store.

Q Mr. Palmer, did you have contact with Mr. Robinson the next day?

A Yes, I did.

Q And can you please tell us from the very first time you saw Mr. Robinson how that contact occurred.

A I received a call from the switchboard operator upstairs on the second floor, which is a restricted area, saying that Mr. Robinson was upstairs just wandering around. And she had asked him to leave.

. . .

Q (By Mr. Martin) Mr. Palmer, without telling us what a person may have told you, can you tell us what you did with regard to Mr. Robinson on that day.

A I asked Mr. Robinson to exit the restricted area and leave the store.

Q Now, you say this area was restricted; would you describe what the area was, please.

A Yes. Upstairs in the administrative office section —

Q Is it behind some doors or something that are blocking the shopping area of the store off from the rest of it?

A No. It's pretty much segregated from the store. The closest department to it would be the furniture department. It's probably 60 or 100 feet away from it.

Q Now, I interrupted you. You said you were asking Mr. Robinson to leave I believe?

A Right.

Q Would you continue your description of the activity from that point.

A Mr. Robinson started to leave the area, and I was called down to another section of the store. I had another call to assist one of the other security agents. And we finished with that, and I was called to the cafeteria. And Mr. Robinson was again down in the cafeteria after being asked to leave the store.

Q And what happened after that point?

A He had walked through our cafeteria line and was taking the tops off of sandwiches, just the bread part, and was putting them in his pockets. And he also went up and got a cup of coffee. And he walked through the line and failed to pay, and was asking some people for some money again.

Q Mr. Palmer, with reference to the cafeteria and the cashier, is there a cashier at the end of the cafeteria line?

A That is correct.

Q You say Mr. Robinson walked through without paying. How do you know he was not going to pay?

A I was called down to the cafeteria when Mr. Robinson arrived in the cafeteria and was taking the tops off the —

Q You saw him do this?

A Right.

Q What did he do then?

A After he walked through the line and beyond the clerk, he walked over to the table and he sat down. And as the



normal procedure for Mr. Robinson, he had taken probably six, a half-dozen or a dozen packages of sugar and poured them all in his coffee and made a mess on the table and the area. And he just there. (sic)

Q Did you have any conversation with Mr. Robinson?

A I had asked Mr. Robinson if he had any money to pay for the items.

Q Did you ask him to leave the store at this point?

A Yes, I did.

Q Did he leave the store?

A No, he did not.

Q What happened next?

A I called the Waterford Township Police.

Q Why?

A The man had failed to pay for food and had failed to leave the store when I asked him to leave. And the odor around him was offensive. The customers were looking at him.

. . .

Q (By Mr. Martin) Mr. Palmer, were there customers other than Mr. Robinson in the cafeteria?

A Yes, there was.

Q Did you observe them in the cafeteria?

A Yes, I did.

Q Did you observe their reaction, if any, to Mr. Robinson?

. . .

A Yes.

Q (By Mr. Martin) Did you observe the customers do anything in reaction to Mr. Robinson?

A Yes.

Q (By Mr. Martin) What were they doing?

A The customers were staring in the direction of Mr. Robinson and staying away from Robinson by going to tables on the other side of the cafeteria or leaving the cafeteria.

Q (By Mr. Martin) You said that you called the Waterford Township Police on May 24th?

A Yes, I did.

Q Did an officer come to the Sears store?

A Yes.

Q Do you know which officer?

A Officer Tarpenting.

Q Did you know who he was at the time?

A By name or —

Q By name.

A Yes I did.

Q Is he in the courtroom today?

A Yes, sir.

Q The man in the brown suit today?

A Yes, sir.

Q Did you have any conversation with Officer Tarpenting?

A Yes, I did.

Q What did you tell him?

A I told Officer Tarpenting what had happened as far as him walking through the line and failing to pay for the merchandise, that he was making a mess, the clerks were complaining as far as odor, and I was complaining.

Q Did you observe Mr. Robinson and the reactions of the customers within the cafeteria during the period of time that Officer Tarpening was present?

A Yes.

Q Was there any reason that you know of that Officer Tarpening would not have been able to make the same observation you did?

A No.

Q How long was Officer Tarpening in the store that day? Do you recall?

A I believe probably ten minutes, maybe fifteen minutes.

Q During that period of time when Officer Tarpening was in the cafeteria, were you present and Mr. Robinson present.

A Right.

Q Did Officer Tarpening arrest Mr. Robinson that day, if you know?

A I believe he did.

Q Did Officer Tarpening speak to Mr. Robinson before he arrested him?

A Yes, he did.

Q Was Mr. Robinson handcuffed or anything?

A No, sir, he wasn't.

Q Did Officer Tarpening take Mr. Robinson from the store?

A No.

Q Pardon me?

A He asked Mr. Robinson to leave the store with him. He didn't forcibly take him out of the store.

Q Did they leave the store together?

A Yes, they did.

Q Did you see where they went?

A They walked outside the cafeteria door, which would be our north doors.

Q Did Officer Tarpenting have any hold on Mr. Robinson when they left?

A No, he didn't.

. . .

Q (By Mr. Martin) After that point in time, did you have any further contact with either Officer Tarpenting or Mr. Robinson?

A No, sir, not that I recall."

TR Vol. II of II pp. 606-616; Joint Appendix pp. 369-379.

The above highlighted testimony of Respondents Tarpenting and Bailey, along with the information provided by the Sears employee, Gregory Palmer, could leave the court below with no other decision than to find that the jury verdict was not against the weight of the evidence. The facts suggest that the arrest by Respondent Tarpenting was made after he himself observed the behavior and conduct of Mr. Robinson. In that there had been several incidents involving Mr. Robinson's annoyances at the Sears store, there could be no dispute that there was in fact probable cause for the arrest of Mr. Robinson under Section 5.3 of Waterford Township Ordinance 87. A Writ of Certiorari should not be granted by this Court to address the false arrest claim that was properly decided by the court below.

### III.

**THE COURT BELOW PROPERLY APPLIED  
MICHIGAN LAW IN REFUSING TO SET ASIDE  
THE DISTRICT COURT'S AWARD OF A  
DIRECTED VERDICT IN FAVOR OF THE  
RESPONDENTS BAILEY AND TARPENING OF  
THE PENDING STATE LAW CLAIM OF MALI-  
CIOUS PROSECUTION.**

The Petitioner is seeking this Court's review in defining the scope of the Federal Court's authority and responsibility

when exercising pendent jurisdiction over State Law claims. There is no dispute that the district court applied the correct elements which define a malicious prosecution claim in Michigan. What the Petitioner disputes is that the district court did not create an exception to the well settled principles of law of malicious prosecution in the State of Michigan. The Michigan case of *Fort Wayne Mortgage Company v Carletos*, 95 Mich App 752, 757; 291 N.W. 2d 193, 195 (1980) defines the elements of a malicious prosecution claim as follows:

- (1) A criminal proceeding instituted or continued by the defendant against the plaintiff,
- (2) Termination of the proceeding in favor of the accused,
- (3) Absence of probable cause for the proceeding, and
- (4) "Malice" or a primary purpose other than that of bringing the offender to justice."

The trial court, after hearing extensive arguments on the issue, gave its ruling:

"The court believes that the element of favorable outcome to the party bringing the action is not present here, that there was indeed no prosecution ever completed on the merits, that the defendant in the criminal prosecution was adjudged incompetent.

Counsel for the plaintiff in this case makes a very ingenious and thoughtful argument. However, where the court parts company with him, is, he said these defendants should not be allowed to benefit from the poor health of the plaintiff in that criminal proceeding. I think that is looking at it in the manner which states the case most favorable to this plaintiff, but is not the correct analysis. The correct analysis is, they are benefiting from the fact that there was no result in the criminal prosecution, which result is the linchpin on which we allow the types of actions to be brought. There has to be a determination that what they did in fact was wrong, and that determination is made from the vindication

of the defendant in the criminal prosecution. And since we didn't have that hearing, the court finds that the elements of malicious prosecution are not met; and a partial directed verdict on that element of plaintiff's claim is granted."

TR Vol. II of II pp. 538-539; Joint Appendix pp. 491-492.

The court below agreed that the directed verdict on the issue of malicious prosecution in favor of Respondents Bailey and Tarpening must stand. The court below was also satisfied that the Petitioner had not met one of the requisite elements of a malicious prosecution claim, namely, that the proceedings must terminate in favor of the accused. Therefore, there is no sound reason why this Court should grant Petitioner's request for Certiorari to reconsider an issue that has been properly decided by the courts below, and is not in conflict with the decision of another Federal Court of Appeals on the same matter.

## CONCLUSION

For these reasons, Respondents Tarpening and Bailey submit that certiorari should not be granted to address any of the issues Petitioner presents in her Petition for Certiorari. There has been no showing that the court below has rendered a decision that is in conflict with the decision of another Federal Court of Appeals on the same matter.

Respectfully submitted.

MARTIN, BACON & MARTIN, P.C.

BY: /s/ JOHN G. BACON P10331  
*Attorney of Record for*  
*Respondents Officer Donald Bailey*  
*and Officer Timothy Tarpening*  
44 First Street  
Mt. Clemens, MI 48043  
(313) 979-6500

MARTIN, BACON & MARTIN, P.C.

BY: /s/ JONATHAN E. MARTIN  
P17151  
BY: /s/ KEVIN L. MOFFATT  
P34284  
*Attorneys for Respondents,*  
*Officer Donald Bailey and*  
*Officer Timothy Tarpening*  
44 First Street  
Mt. Clemens, MI 48043  
(313) 979-6500

